

Document: Proposed Rule

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**TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT FUND**

Proposed Rule
LSA Document #01-196

DIGEST

Adds 35 IAC 1.2-6-7 regarding plan loan procedures for making loans to participants from the legislators' defined contribution plan. Establishes maximum loan amounts, maximum loan duration, and other procedural requirements for receiving a loan pursuant to Section 72(p) of the Internal Revenue Code. Effective 30 days after filing by the secretary of state.

35 IAC 1.2-6-7

SECTION 1. 35 IAC 1.2-6-7 IS ADDED TO READ AS FOLLOWS:

35 IAC 1.2-6-7 Legislators' defined contribution plan loans

Authority: IC 2-3.5-5-11; IC 5-10.3-3-8

Affected: IC 2-3.5-5-11

Sec. 7. (a) Any participant in the legislators' defined contribution plan may apply on the applicable form to the fund for a loan from the legislators' defined contribution plan pursuant to this rule and such other procedures as may be established by the fund. Such loans will be available to all such participants on a uniform and nondiscriminatory basis. All loans are subject to the approval of the fund, or its designee.

(b) The maximum amount of such loan, when added to the outstanding balance of all other loans from the fund, shall not exceed the lesser of:

- (1) fifty thousand dollars (\$50,000), reduced by the excess, if any, of the highest outstanding balance of loans from the fund during the one (1) year period ending on the day before the date on which the loan is made, over the outstanding balance of loans from the fund on the date on which such loan is made; or**
- (2) one-half (½) of the employee's accounts within the defined contribution plan of the participant under the fund.**

(c) Subject to subsection (b), the minimum amount of a loan shall be one thousand dollars (\$1,000).

(d) The loan program described in this rule shall be administered by the fund. All loans shall comply with the following terms and conditions:

- (1) All loans shall be subject to the approval of the fund and subject to applicable Internal Revenue Service restrictions.**
- (2) A participant may apply for a loan by completing the applicable forms.**
- (3) Each loan shall be amortized on a substantially level basis with monthly payments. Payments shall be made on the first of a month for that month. The period of repayment shall be a minimum of twelve (12) months and shall not exceed five (5) years from the loan origination date. Notwithstanding the preceding sentence, the term of the loan shall not extend beyond the earlier of:
 - (A) in the case of a distribution which begins after the date of the loan, the date such distribution of the employee's accounts within the defined contribution plan of the participant under the fund begins; or**
 - (B) the date of a default on the loan.****

(e) The participant receiving the loan shall make the required repayments in accordance with the loan agreement.

(f) The rate of interest shall be the prime rate per annum, as published in The Wall Street Journal on the first day of the quarter (or the earliest publication day of the quarter in the event of a publication holiday) in which a completed loan

application is submitted, plus one percent (1%). A loan will carry the same interest rate throughout its term.

(g) The fund shall declare a default on a loan as of:

- (1) the last day of the calendar quarter following the calendar quarter in which the participant fails to make a payment, unless the participant pays the amount due plus accrued interest prior to such date; or
- (2) the date thirty (30) days after the fund in good faith deems the plan insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(h) On default, the entire amount outstanding on the participant's loan will be due and payable.

(i) On default, the fund shall report to the Internal Revenue Service the outstanding loan balance (principal and interest) as a taxable distribution to the participant, which may also be subject to an additional ten percent (10%) excise tax under the Internal Revenue Code.

(j) Each loan shall be adequately secured. The plan shall have a security interest in the employee's accounts within the defined contribution plan of the participant under the fund.

(k) Any loan to a participant shall be considered to be a separate asset of the legislators' defined contribution plan segregated for the benefit of such participant. The interest paid on the loan shall be credited to the employee's accounts within the defined contribution plan of the participant. Such portion of the employee's accounts within the defined contribution plan on loan to the participant shall not share in the allocation of gains or losses. The principal and interest paid on the loan shall be credited to such employee's accounts within the defined contribution plan as determined by the fund.

(l) A participant may not take more than two (2) loans in any calendar year.

(m) A participant may have any number of loans outstanding as long as all of the requirements of this rule are met.

(n) Any loan processing fee charged by a third party will be paid by the participant from the employee's accounts within the defined contribution plan of the participant.

(o) The loan proceeds will come from the employee's accounts within the defined contribution plan of the participant on a pro rata basis, and from the directed investment options of the participant on a pro rata basis.

(p) The participant may prepay, without penalty, the entire (or any part of the) outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (excluding cash) made payable to the fund and delivered to the fund. No reamortization will apply. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-7*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 3, 2001 at 2:00 p.m., at the Board of Trustees of the Public Employees' Retirement Fund, 143 West Market Street, Fifth Floor, Indianapolis, Indiana the Board of Trustees of the Public Employees' Retirement Fund will hold a public hearing on a proposed new rule regarding plan loans from the legislators' defined contribution plan, which PERF will use in the implementation of HEA 1193, as passed during the first regular session of the 112th Indiana general assembly. Copies of these rules are now on file at the Board of Trustees of the Public Employees' Retirement Fund, Harrison Building, 143 West Market Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

E. William Butler
Executive Director
Board of Trustees of the Public Employees' Retirement Fund